

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14177, of Ralph C. Ferrara, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibitions against allowing an open parking space to be located within ten feet of a dwelling (Sub-section 7205.2) and within three feet of a side lot line (Sub-paragraph 7205.122) for a proposed deck to be used as a parking space in an R-3 District at premise 1307 35th Street, N.W., (Square 1228, Lot 842).

HEARING DATE: October 24, 1984
DECISION DATE: November 7, 1984

FINDINGS OF FACT:

1. The subject premises is located on the east side of 35th Street, N.W., between O Street on the north and N Street on the south. The site is in an R-3 District and is known as premises 1307 35th Street, N.W.

2. The subject lot is rectangular in shape. Its dimensions are 35.67 feet on the east and west sides and 79.21 feet on the north and south sides. The lot has an area of 4,280 square feet.

3. The site is improved with a single family semi-detached dwelling, having its detached side on the north. The subject dwelling is a three-story brick structure. The subject structure occupies twenty-seven percent of the lot area. There is access to and from the subject property through 35th Street. There is no alley access.

4. The surrounding area is developed with row houses, apartment buildings and commercial establishments.

5. The subject property is rectangular in shape. Directly to the north of the subject dwelling is a thirteen foot wide side yard. The side yard of the subject property has a steep drop which could cause potential erosion problems and water drainage problems for adjacent properties if the soil were disturbed by grading.

6. On-street parking in the subject neighborhood is scarce due to the location of the subject dwelling near the main gate of Georgetown University and the popularity of the Georgetown area for shopping. The owner of the property experiences a daily search for an available parking space.

7. The applicant proposes to construct an on-site open parking space at the northwest corner of the lot adjacent to his dwelling in the side yard. The proposed parking space would allow the applicant to secure his car on his property. The proposed space would measure thirteen feet from north to south and nineteen feet from east to west. The parking area would be enclosed with a gate at the front property line.

8. The proposed parking space would abut the side lot line located to the north and the dwelling on the south. The applicant thus seeks variances from the requirements of Sub-section 7205.2 and Sub-paragraph 7205.122 of the Zoning Regulations.

9. The applicant discussed the proposed on-site parking space with his adjacent neighbor to the north and showed him the architect's plans demonstrating the impact of the proposed space on the neighbor's dwelling. The neighbor had notice of these proceedings and did not file any opposition to this variance request with either the ANC or this Board.

10. The proposed on-site parking deck may block out some light and air on some of the windows of the dwelling located to the north of the applicant. This intrusion is quite minimal. Moreover, the applicant could, as a matter-of-right, build a three story structure in the side yard, thus blocking out all light and air of the dwelling to the north.

11. The design of the proposed gate, which will be visible from the street, will enhance the aesthetics of the neighborhood.

12. The Board of Zoning Adjustment has the power to grant variances under Paragraph 8207.11 of the D.C. Zoning Regulations which provides that where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, the Board may grant a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

13. The applicant considered alternative locations for the parking space in the rear yard of the subject dwelling. The steep slope of the land renders it unsafe for the

building of a descending ramp into the yard for access to a rear yard parking space.

14. At the rear location there would be additional variances required because of the location of two structures on the adjoining property to the north. There is a dwelling, which is directly adjacent to the subject dwelling, and a carriage house located thirty-four feet behind or due east of the primary house. Thus, even if the steep slope and grade differentiation on the applicant's property did not pose a major obstacle to locating the parking deck further back into the applicant's rear yard, the carriage house located on the property to the north of the subject dwelling does not provide sufficient footage to avoid the necessity of a variance.

15. The only practical location for the proposed space is in the side yard area which is thirteen feet wide. This area is too narrow to locate a parking space ten or more feet from the dwelling and three or more feet from the north side lot line.

16. Advisory Neighborhood Commission 2E, by report dated August 1, 1984, recommended that the application be approved with conditions. The resolution was unanimously adopted. The ANC based its support on its observations that this property contains in excess of 200 percent of the minimum required lot area. As it is presently developed, it covers less than thirty percent of the lot area. The side yard that is proposed to be used for parking was formerly occupied by a separate structure. As a matter-of-right, the applicant could construct a garage without seeking any variances. The ANC noted that the property is encumbered with an exceptional condition in that the side yard drops down almost a full story just inside the property line, and there is no alley access. The ANC noted that the adjoining house to the north has windows that open directly over the proposed location of the parking space, and an open parking space could very easily become an unreasonable irritant if not handled correctly. The ANC noted that, in 1962, the Citizens Association of Georgetown opposed the granting of similar-sounding relief in BZA Case No. 6946 because at that time part of the proposed parking space would have been on public space. The present applicant is proposing to go to considerable expense to overcome that objection. The ANC further noted that the historic preservation element of the Comprehensive Plan specifically mentions the importance of preserving remaining open spaces in historic districts.

17. The ANC resolved that it would have no objection to the granting of the requested relief under the following conditions:

- A. The applicant would relocate to the north the proposed curb-side tree, so that the driveway would be straight, the tree could be placed within a regulation-sized tree box that was out of the way of the driveway, and the location of the curb cut would be coordinated with the existing marked metered spaces to the immediate south, so that no more than one curb-side parking space would be eliminated.
- B. The gates would remain closed at all times except when a car is actually pulling in or pulling out.
- C. Absolutely no parking would be allowed in the portion of the driveway that crosses public space.
- D. The space would be used to park one passenger vehicle and would not be used for the parking of trailers, boats, or other vehicles of any kind except bicycles.
- E. The driveway and curb cut would be surfaced in brick, and the minimum landscaping would be as shown on applicant's plans.

18. The Department of Public Works (DPW), submitted no written report. Mr. Hans Johannsen of the DPW testified at the public hearing as to DPW concern for a mature curbside tree that is located adjacent to the front of the subject dwelling. Mr. Johannsen is the Chief of the Tree Division at DPW. He expressed concern that relocating the mature tree might injure it and would be unnecessary for the implementation of the curbcut and driveway for the applicant. Mr. Johannsen had visited the subject site on several occasions and had observed that the tree was in a healthy growing condition. He saw no reason to remove the tree if there was a possibility to get the required access to the applicant's property in any other way. Mr. Johannsen recommended that if the applicant's proposed driveway were located further south it would be outside the space required for the existing treebox. If the driveway and curbcut were located a few feet further south then the removal of the mature curbside tree would not be required.

19. One letter of opposition was submitted to the record by a neighbor in the subject square. The opposition was based on the concern that the driveway and curbcut would eliminate the curbside tree and destroy the landscaped garden at the front of the subject dwelling. The opponent noted that the subject dwelling is a very old, Federal style house set back from the sidewalk, with a beautiful, landscaped front garden of flowers and shrubs which extends across the full width of the house and the twelve feet or so of open space to the side of the house. This latter area is

bounded, at the rear, by a high, solid wood fence extending from the house to the lot line. Directly in line with this fence, on the street side of the sidewalk, is the large tree noted in Finding No. 18 and the ANC report. The opponent further noted that presumably the fence would be altered to permit parking at the rear. The opponent was concerned that the likelihood of a gate always being closed, to hide the car, is remote. It was the opponent's experience, in this neighborhood, that where driveways are permitted the owner's and visitors' cars end up being parked on the sidewalk so that pedestrians must walk out in the street. The opponent was further concerned with the possibility that at least two parking spaces along the street would be sacrificed for the driveway and no-parking setbacks in order to accommodate one car for the residence.

20. The applicant responded to the opponent's concerns in his testimony at the public hearing. The applicant testified that the garden at the front of his dwelling had been created by his efforts and would be relandscaped to accommodate the proposed driveway. Prior to the applicant's acquiring the property, the garden had been an unsightly dog run with no plant life. The curbside tree will remain at its present location as recommended by DPW. The fence at the front will be altered to provide a Federal-style gate that will be in keeping with the architecture of the Georgetown area. The gate will be kept closed at all times except when the applicant is driving onto or off the site. No visitors will be permitted to block the sidewalk with parked cars. The applicant further testified that the curbcut would be located in such a way that only one parking space would be removed from the public street.

21. The Board is required by statute to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. As to the issues raised by the ANC and the one letter in opposition, the Board generally concurs with the recommendation of the ANC. The Board will condition approval of the application on the use of the space by only one passenger vehicle, and to have construction on the site in accordance with the plans on file. The applicant testified that only one on-site parking space would be eliminated, that he would keep the gate closed and that no parking in public space would be permitted. The Board finds that enforcement of those restrictions, if included in the order of the Board, is impractical. The Board further finds that resolution of the location of the curb cut and relocation of the tree should be left to the applicant working with the Department of Public Works.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an

area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographic conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met this burden of proof in showing a practical difficulty inherent in the property. The design and location of the existing dwelling render it impossible to locate on-site parking on the subject lot that would be ten feet or more from a dwelling and more than three feet from the north side lot line as required by the Zoning Regulations. Additionally, due to the steep slope located on the subject property, it would cause a substantial difficulty and potential danger to attempt to build a descending ramp which would extend into the rear yard of the subject property.

The Board further concludes that everything possible should be done to avoid relocating the curbside tree in front of the applicant's house. However, the decision as to whether the tree must be relocated should be left to the applicant upon consultation with the Department of Public Works Tree Division. The Board further concludes that permitting the proposed space will not cause substantial detriment to the public good nor will it impair the use and enjoyment of the property owned by the applicant's neighbor to the north. The proposed space would help ameliorate a neighborhood parking problem and permit a reasonable use of private property.


The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and maps. It is therefore ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The parking deck shall be used only to park one passenger vehicle.
2. Construction shall be in accordance with the plans marked as Exhibit No. 12 of the record.

VOTE: 3-0 (Maybelle T. Bennett, William F. McIntosh and Charles R. Norris to grant; Douglas J. Patton not voting, having recused himself; Carrie L. Thornhill not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

14 JAN 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14177order/LJPB